

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Provision of Directory Listing Information
under the Communications Act of 1934, as
Amended

CC Docket No. 99-273

**OPPOSITION OF
BELL SOUTH CORPORATION**

BellSouth Corporation, on behalf of itself and its wholly-owned subsidiaries (collectively “BellSouth”), respectfully submits its opposition to the petition for clarification or, in the alternative, reconsideration filed by InfoNXX, Inc. (“InfoNXX”) in the above-captioned proceeding.

As a threshold matter, BellSouth submits that the relief sought by InfoNXX is unclear. Over the last decade, the Commission has repeatedly addressed the obligation of local exchange carriers (“LECs”) to protect the privacy of customers who have requested that their telephone numbers not be provided through directory assistance (“DA”) and/or listed in directories. On each occasion, the Commission has stated that LECs are prohibited from providing competing DA providers with access to information that the customer has specifically asked the LEC not to make available, including non-published numbers. The Commission’s May 2005 *Order on Reconsideration*,¹ which is the subject of the instant petition, did nothing to change this long-

¹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory*

standing restriction. Therefore, it is unclear what ambiguity InfoNXX is asking the Commission to clarify or reconsider.

To the extent that InfoNXX is requesting that the Commission establish a new rule that requires LECs to share non-published numbers with other carriers (even for the narrow purpose of emergency notification), the Commission should reject such a request as procedurally invalid because the time for reconsideration has expired. To the extent that InfoNXX is asking the Commission to clarify that LECs may use non-published numbers for the limited purpose of providing emergency contact services, BellSouth does not believe that any clarification is necessary. As discussed more fully below, in 1999, the Commission concluded that, if a LEC has a process in place for providing emergency notification to its customers who have non-published numbers, that LEC must provide the competing carrier's end users with a similar ability to contact the LEC's subscribers with non-published numbers in an emergency. This obligation is not new, and BellSouth does not believe that a clarification is necessary.

Notwithstanding the ambiguity in InfoNXX's petition, the Commission should respond to InfoNXX's petition by re-affirming its prior conclusions and stating that: (1) a LEC is not required to provide competing carriers or DA providers with access to non-published numbers, even for emergency purposes; and (2) a LEC that provides competing carriers and their end users the same ability to contact the LEC's subscribers with non-published numbers in an emergency through interconnection agreements or other arrangements is in compliance with the nondiscriminatory access requirement of Section 251(b)(3).

Listing Information under the Telecommunications Act of 1934, as Amended, CC Docket Nos. 96-115, 96-98 & 99-273, Order on Reconsideration, 20 FCC Rcd 9334 (2005) ("Order on Reconsideration").

I. INTRODUCTION

On September 16, 2005, InfoNXX filed a petition asking the Commission to clarify certain aspects of its May 3, 2005 *Order on Reconsideration* regarding the obligations of LECs to provide nondiscriminatory access to directory assistance databases pursuant to Section 251(b)(3).² Specifically, InfoNXX requests that the Commission clarify that: (1) “LECs may only restrict access to non-published numbers³ where LEC DA operators have access to such numbers solely to provide emergency contact services *and* the emergency services are made available to competitive DA providers on reasonable and nondiscriminatory terms”⁴ and (2) a LEC seeking to use non-published numbers in any other service offering must first obtain a waiver of the Commission’s rules and agree to make the non-published numbers available to competing DA providers.⁵

As an initial point of clarification, BellSouth’s DA operators do not have access to non-published numbers. Therefore, InfoNXX’s claim that ILECs are “denying access to non-published numbers that they regularly provide to their own DA operators”⁶ is simply not true in BellSouth’s case. The only information that BellSouth’s DA operators see on the screen when

² Petition for Clarification or, in the Alternative, Reconsideration of InfoNXX, Inc., CC Docket No. 99-273 (filed Sept. 16, 2005) (“InfoNXX Petition”).

³ Although InfoNXX refers to “non-listed” and “non-published” subscriber information collectively as “non-published” subscriber information (InfoNXX Petition at 1), the two categories are distinct and have important differences. A non-listed number is a number that is not published in directories but is available through directory assistance. A non-published number, however, is neither published in directories nor provided through directory assistance. BellSouth’s opposition addresses access to non-published numbers, because access to non-listed numbers should not be at issue. Again, non-listed numbers, although not published in directories, are available through directory assistance; therefore, competing carriers have access to non-listed numbers of LEC subscribers in order to provide DA service to their own end users.

⁴ InfoNXX Petition at 4.

⁵ *Id.*

⁶ *Id.* at 1.

accessing records for subscribers with non-published numbers is the subscriber name and address – no telephone number. Thus, BellSouth provides other carriers with the same access to non-published numbers that it provides to itself. BellSouth's operators do not see non-published numbers, and BellSouth does not include non-published numbers in the DA listings supplied to competing DA providers. Accordingly, BellSouth is not engaged in any discriminatory conduct.

II. THE COMMISSION HAS LONG HELD THAT LECs MAY NOT PROVIDE OTHER CARRIERS OR DA PROVIDERS WITH ACCESS TO NON-PUBLISHED NUMBERS AND SHOULD NOT REVISIT ITS CONCLUSION IN THIS PROCEEDING.

As an initial matter, the scope of InfoNXX's request is unclear. BellSouth is unable to determine whether InfoNXX is asking the Commission to require LECs to provide competing carriers and DA providers with non-published numbers or whether InfoNXX is requesting that the Commission clarify that, in the absence of a waiver, LECs may only use non-published numbers for the limited purpose of contacting their subscribers in emergency situations.

To the extent that InfoNXX is seeking the former outcome – a requirement that LECs provide carriers and competing DA providers access to customers' non-published telephone numbers – BellSouth opposes such a request as procedurally invalid. As discussed more fully below, the Commission has long held that carriers are obligated to uphold a customer's request for privacy and may not share non-published numbers with other carriers or DA providers. Therefore, the time for reconsidering this prohibition has long expired. If InfoNXX is asking the Commission to revisit the restriction against sharing non-published numbers, it must seek a rule change through the proper notice and comment procedures.

Over the past decade, the Commission has addressed the obligations of LECs to provide nondiscriminatory access to directory assistance and directory listings pursuant to Section

251(b)(3) in a number of orders. Not once in that timeframe has the Commission required LECs to share non-published numbers with other carriers or DA providers. In 1996, the Commission expressly concluded “that the obligation to permit access to directory assistance and directory listings does not require LECs to permit access to unlisted⁷ telephone numbers, or other information that a LEC’s customer has specifically asked the LEC not to make available.”⁸ The Commission further stated that, “in permitting access to directory assistance, LECs bear the burden of ensuring that access is permitted only to the same information that is available to their own directory assistance customers, and that the inadvertent release of unlisted names or numbers does not occur.”⁹ The Commission could not have been any clearer when it stated: “[W]e do not require access to unlisted names or numbers.”¹⁰

The Commission affirmed its commitment to respecting customer privacy requests in 1999 when it expressly declined to require LECs to share non-published numbers with other carriers or DA providers.¹¹ The Commission’s decision was in response to parties proposing that “LECs should be required to make the names, addresses, and telephone numbers of customers

⁷ The Commission appears to use the terms “unlisted” and “non-published” interchangeably in some instances. *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-98 & 99-273, *Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273*, 14 FCC Rcd 15550, 15636-40, ¶¶ 164-169 (1999) (“SLI/DA Order on Reconsideration”).

⁸ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al.*, CC Docket No. 96-98, *et al.*, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19458, ¶ 135 (1996) (emphasis added).

⁹ *Id.*

¹⁰ *Id.* at 19460, ¶ 141.

¹¹ *SLI/DA Order on Reconsideration*, 14 FCC Rcd at 15639, ¶ 168.

with non-published numbers available to competing directory assistance providers.”¹² The Commission rejected these requests and found that “[t]o require providing LECs to include the numbers of customers whose numbers are unlisted is not necessary to create a level playing field for the provision of directory assistance.”¹³

In May 2005, the Commission reiterated its prohibition against LECs providing access to customers’ non-published numbers.¹⁴ The Commission further noted that its current rules forbid LECs from granting other carriers or DA providers access to non-published numbers.¹⁵ Section 51.217(c)(3)(iv) states that a “LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available, with the exception of customer name and address.”¹⁶

As the above history demonstrates, LECs are precluded from supplying other carriers and DA providers with access to customers’ non-published numbers in order to honor customers’ privacy requests. Therefore, to the extent that InfoNXX is asking the Commission to revisit this prohibition, it must seek a rule change through the proper notice and comment procedures. A petition for clarification and/or reconsideration is an inappropriate vehicle to accomplish such a change.

Another possible reading of InfoNXX’s petition is that InfoNXX is asking the Commission to clarify that LECs should be able to use non-published numbers only for the narrow purpose of providing emergency contact services. To the extent that InfoNXX is making

¹² *Id.* at 15636-37, ¶ 165 (citing Petition of Excell at 9, CC Docket No. 99-273 (filed Sept. 9, 1996)).

¹³ *Id.* at 15639, ¶ 168.

¹⁴ *Order on Reconsideration*, 20 FCC Rcd at 9342, ¶ 11.

¹⁵ *Id.*

¹⁶ 47 U.S.C. § 51.217(c)(3)(iv).

this request, BellSouth does not object to such a clarification (although it does not believe that such a clarification is necessary).

BellSouth has detailed procedures for providing emergency notification to customers with non-published numbers. None of these procedures, however, permit a BellSouth DA operator to see or access non-published numbers. If a BellSouth DA operator receives an emergency request to notify a subscriber with a non-published number, he/she is required to refer that call to the appropriate supervisor. The supervisor then contacts the BellSouth subscriber (unless the subscriber has requested not to be contacted under any circumstances), notifies him/her of the emergency request, and/or provides the name and number of the caller trying to contact the subscriber.

BellSouth also has procedures in place for assisting other carriers whose end users are trying to contact for emergency notification purposes BellSouth subscribers who have non-published numbers. BellSouth operates a 24-hour office to handle these emergency requests from other carriers. When a carrier calls the BellSouth office and explains that one of its end users is trying to call a BellSouth subscriber who has a non-published number, an authorized supervisor (not a BellSouth DA operator) follows the same procedures described above – the supervisor will contact the BellSouth subscriber (unless the subscriber has requested not to be contacted under any circumstances), notify him/her of the emergency request, and/or provide the name and number of the caller trying to contact the subscriber.

The above arrangement is consistent with the Commission's prior rulings regarding the ability of carriers to notify end users in emergency situations. According to the Commission, "a requesting LEC should be able to ensure that its subscribers will have the same ability as the

providing LEC's subscribers to contact subscribers with unlisted numbers in an emergency.”¹⁷

The Commission concluded that, if a LEC has a service for contacting its non-published subscribers on behalf of persons stating that a medical condition required such contact, the LEC would have to extend that service to the subscribers of other LECs.¹⁸ The Commission further noted “that requesting LECs can arrange through interconnection agreements to have the providing LEC, upon request of the requesting LEC, contact the unlisted subscriber in such a situation.”¹⁹

As described above, BellSouth has followed the Commission's directive and developed procedures to ensure that the end users of competing carriers are able to contact for emergency notification purposes BellSouth subscribers who have non-published numbers. BellSouth therefore is providing competing carriers and their end users with the same ability to contact BellSouth subscribers with non-published numbers in an emergency that it provides to itself and to its customers.

III. CONCLUSION

In response to InfoNXX's petition, the Commission should re-affirm its prior conclusions and state that: (1) a LEC is not required to provide competing carriers or DA providers with access to non-published numbers (even for the limited purpose of emergency notification); and (2) a LEC that provides competing carriers and their end users the same ability to contact the LEC's subscribers with non-published numbers in an emergency through interconnection

¹⁷ *SLI/DA Order on Reconsideration*, 14 FCC Rcd at 15639, ¶ 168.

¹⁸ *Id.*, n.424.

¹⁹ *Id.*, ¶ 168.

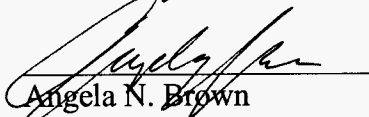
agreements or other arrangements is in compliance with the nondiscriminatory access requirement of Section 251(b)(3).

Respectfully submitted,

BELLSOUTH CORPORATION

Its Attorney

By:

A handwritten signature in black ink, appearing to read "Angela N. Brown", is written over a horizontal line.

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November 17, 2005

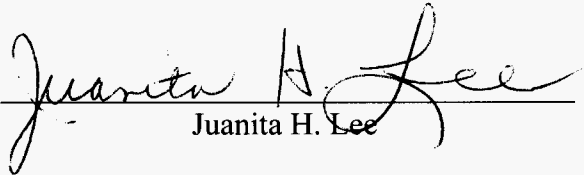
CERTIFICATE OF SERVICE

I do hereby certify that I have this 17th day of November 2005 served the following with a copy of the foregoing **OPPOSITION OF BELLSOUTH CORPORATION** via electronic filing and/or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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